

Exhibit H

Part 1

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481-rdd

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In the Matter of:

DELPHI CORPORATION,

Debtor.

- - - - -x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

July 29, 2009

3:22 PM

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

VERITEXT REPORTING COMPANY

212-267-6868



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2 HEARING re Doc #16646; Motion to Approve (A) Supplement to
3 Motion for Order (I) Approving Modifications to Debtors' First
4 Amended Plan of Reorganization (As Modified) and Related
5 Disclosures and Voting Procedures and (II) Setting Final
6 Hearing Date to Consider Motion..

7
8 HEARING re Doc #14310; Motion to Approve Motion for Order (I)
9 Approving Modifications to Debtors' First Amended Plan of
10 Reorganization

11
12 HEARING re Doc #18668; Proposed Agenda for Plan Modification
13 Hearing (related document(s) [16646])

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15 HEARING re Doc#18674; Response
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24 Transcribed By: Clara Rubin, Esther Accardi and Dena Page
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P R O C E E D I N G S

THE COURT: Okay, in re: Delphi Corporation.

MR. BUTLER: Your Honor, good morning. Jack Butler, along with a number of my colleagues, including my partners, Kayalyn Marafioti, Al Hogan, Ron Meisler, Eric Cochran and John Lyons, here on behalf of Delphi Corporation for its plan modification hearing.

Your Honor, today, we are asking you to consider a series of modifications to the plan and confirmation order. As that confirmation order was entered on January 25, 2008 at docket number 12359. Your Honor, this hearing represents the culmination of a tremendous amount of work by a tremendous amount of parties. Since the plan investors did not consummate the original first amended joint plan of reorganization of Delphi Corporation and its affiliated debtors and debtors-in-possession back on April 4th of 2008. As is customary, Your Honor, in at least these cases, and I think, in Your Honor's court, we are not going to -- the debtors are not going to make any kind of an extensive opening statement. We have a fair amount of business to transact, in terms of getting things into the record and addressing a variety of issues, including some 1900 plus objections that have been filed, many of which have been resolved, but still need to be addressed. And so I will, Your Honor, at the appropriate time, toward the other end of this hearing, ask for the opportunity to make a closing

1 argument and present Your Honor, really, the debtors'
2 perspective on what's transpired in these cases since January
3 25th of last year.

4 THE COURT: Okay.

5 MR. BUTLER: Your Honor, before moving to the formal
6 presentation of our case in chief, asking Your Honor to approve
7 these plan modifications under Section 1127 of the Bankruptcy
8 Code, I would like to introduce some of the principals that are
9 here today in court on behalf of the debtors that will be
10 presented as witness in this 1127 hearing. I'd ask them -- you
11 know many of them, but I'd ask them, please -- the witnesses to
12 please stand when they're introduced.

13 First is Mr. Craig G. Naylor who's been a member of
14 our board of directors since 2005 and is the board's lead
15 independent director. Mr. Naylor will offer testimony with
16 respect to the board of directors' approval of the modified
17 plan and the underlying transactions. Is he in the courtroom
18 at the moment? Our witnesses actually need to come in here, so
19 you should get them. So Mr. Naylor will be testifying, as
20 well. And I assume that's where Mr. Miller is, as well? There
21 he is.

22 Second is Mr. Robert S. Miller, Jr. Mr. Miller is the
23 executive chairman of the board of directors of Delphi
24 Corporation. He was the chairman and chief executive of Delphi
25 when Delphi and its subsidiaries filed these Chapter 11 cases

1 and continued in that role until December 31, 2006 when the
2 board and he turned the reins of the CEO role over to Rodney
3 O'Neill. Mr. O'Neill has led the company since that time,
4 together with Mr. Miller in partnership as Mr. Miller has
5 retained the role of executive chair. And Mr. Miller will
6 testify to a number of issues today, including the major
7 objectives of the debtors' Chapter 11 cases, and the debtors'
8 role in the global automotive industry as well as the business
9 judgments that have been exercised by the debtors.

10 THE COURT: Okay.

11 MR. BUTLER: third person I'd like to introduce -- who
12 you know well -- is Mr. Sheehan. John D. Sheehan is the vice-
13 president and chief financial officer of Delphi Corporation.
14 He's been before this Court on numerous occasions to offer
15 testimony in the past. Today he will offer testimony with
16 respect to the negotiations and due diligence conducted in
17 connection with the debtors' entry into the MDA and related
18 auction process as well as the results of the auction process
19 that was conducted over two days earlier this week. And he
20 will offer testimony in support of the various confirmation
21 requirements under Chapter 11 of the Bankruptcy Code as 1129 of
22 the Code is referenced within Section 1127, and therefore,
23 relevant to this hearing.

24 The next witness is Mr. Keith D. Stipp. Mr. Stipp is
25 Delphi's executive director in charge of restructuring, and he

1 will offer testimony with respect to the MDA, the modified
2 plan, and the reorganized debtors' postemergent state
3 operations and feasibility issues associated with that.

4 THE COURT: Okay.

5 MR. BUTLER: And our two outside financial advisors
6 who have been involved from the beginning of these cases.
7 First Mr. Shaw, William R. Shaw, is a managing director at
8 Rothschild, Inc., a financial advisor, investment banker to the
9 debtor, to Delphi, and has been the debtors' lead strategic
10 financial advisor. And he will offer testimony in connection
11 with the debtors' analysis of the transactions that have been
12 considered over the last number of weeks by the debtors.

13 And Mr. Randall S. Eisenberg is the senior managing
14 director at FTI consulting, the debtors' restructuring and
15 financial advisor, and he will offer testimony to, among other
16 things, the best interest test that needs to be revisited under
17 Section 1129 today.

18 Your Honor, what I'd like to do next, if I can, is
19 address the evidentiary record, and then I'm going to come back
20 and talk about voting and a number of other issues.

21 THE COURT: Okay.

22 MR. BUTLER: Your Honor, in support of the debtors'
23 case in chief, we have prepared a comprehensive joint exhibit
24 list that has been reviewed with the principal stakeholders and
25 what were formerly the principal objectors to this matter -- to

1 this motion, and from most of which we've now resolved their
2 objections. The exhibit list has 634 documents listed, and the
3 documents are divided into 38 categories, as outlined. I'm not
4 going to go through each of the categories. I will offer the
5 declarants whose declarations we're going to put into evidence,
6 I will offer those for cross-examination and any questions that
7 the Court may have. Before I move entry of these exhibits and
8 determine whether there are any objections to them, I do want
9 to make two statements about today's record. And this record,
10 this really applies -- well, let me deal with them in order.

11 First, I want to state as follows. That, if Your
12 Honor approves our 1127 motion, today, and there's a subsequent
13 termination of the MDA, and in connection with the parties'
14 reservation of rights there under, the parties to the MDA will
15 not be prejudiced by their support of the transaction at this
16 hearing or by the evidentiary record established at this
17 hearing, and in that event, all parties reserve their rights to
18 supplement and/or challenge the evidence submitted in any
19 further proceedings. As Your Honor must surely understand,
20 this is an extraordinarily complex series of transactions.
21 There have been agreements reached and bridges built across
22 disparate interests in this case. And those agreements all
23 center around the transaction that we're bringing -- the
24 debtors are bringing before the Court today. If that
25 transaction somehow falls away, people don't want to be

1 prejudiced and want to be back to their original positions.
2 And they don't want the debtors, or frankly, anyone else, to
3 use the evidentiary record at today's hearing as a -- either a
4 shield or a sword in whatever might happen in that unlikely
5 event.

6 THE COURT: Okay. On the record, also, the debtors
7 have, in their motion, sought an alternative if approval under
8 1127 isn't granted, the alternative being a sale under Section
9 363. Is it their intention that this record serve as the
10 record for both requests?

11 MR. BUTLER: Your Honor, it would serve as the record,
12 but the debtor is to be clear. The debtors are not moving
13 forward on the 363 motion. And we would view this hearing to
14 really be in two parts, two stages. We intend to present our
15 1127 motion first and seek Your Honor's approval of that
16 motion. And if we fail in that effort, we would then ask for a
17 brief recess and we would then proceed with a 363 motion, the
18 alternative relief under this motion.

19 THE COURT: Okay.

20 MR. BUTLER: But we're not -- and we would rely on the
21 same exhibits, the same record.

22 THE COURT: You would?

23 MR. BUTLER: We would --

24 THE COURT: Okay.

25 MR. BUTLER: -- for those matters.

1 THE COURT: All right.

2 MR. BUTLER: We may actually supplement it in a few
3 ways at that time, that are -- some things that are unique to a
4 363 -- a stand-alone 363 set of transactions. And certainly
5 some of my argument would be different in that circumstance,
6 but we would apply this evidentiary record to that alternative
7 relief if we have to go there.

8 THE COURT: Okay.

9 MR. BUTLER: Similarly, Your Honor, with respect to
10 our plan investors, Appaloosa has filed a limited objection and
11 there are various joinders to that, at docket number 18345,
12 18347, 18348, 18349, 18350, 18675, and 18677, and there may be
13 a few that I didn't note in terms of the filings made on behalf
14 of the plan investors. I simply want to indicate, Your Honor,
15 the debtors' acknowledgement that this evidentiary record is
16 not to be used as any kind of either sword or shield in the
17 adversary proceedings that are currently before the Court in
18 the adversarial proceeding litigation involving the plan
19 investors. So that the findings we're asking Your Honor to
20 consider making today and the record today could not, on its --
21 in terms of the record of the findings, be used as findings of
22 the Court in that litigation.

23 THE COURT: Okay, that's fine. Before you go on, I
24 know there are a number of people standing here and apparently
25 our overflow room overflowed. So there's an additional room,

1 Room 701, if you -- with audio and video, if you would prefer
2 not to stand and would only be watching, in any event. Okay.

3 MR. BUTLER: So, Your Honor, with those two
4 understandings, at this time, Your Honor, the debtors submit to
5 cross-examination on specific witnesses that I will deal with
6 in a few minutes. But the debtors would move for admission all
7 634 documents listed on the joint exhibit index.

8 THE COURT: Okay. Does anyone have any objection to
9 their admission?

10 MR. FOX: Edward Fox, Your Honor, for K&L Gates on
11 behalf of Wilmington Trust Company as indentured trustee. Your
12 Honor, with respect to the plan modification motion, Wilmington
13 Trust will not be pursuing its objections, and we have no
14 objection to the introduction of the exhibits. However, we do
15 reserve our rights, in the event the evidentiary record is
16 going to be used in any other proceeding, including a 363 sale
17 motion, in the event the plan modification is not approved.

18 THE COURT: Okay, you can raise that at that point.

19 MR. FOX: Thank you.

20 MR. ROSENBERG: I assume that goes for the committee,
21 as well, Your Honor --

22 THE COURT: Yes.

23 MR. ROSENBERG: -- we can reserve it. Okay.

24 THE COURT: That's fine. All right, I'll admit those
25 documents into evidence, then --

1 MR. BUTLER: Thank you.

2 THE COURT: -- subject to all the caveats and
3 reservations that have just been outlined on the record.
4 (634 Various Joint Exhibit Documents were hereby received into
5 evidence, as of this date.)

6 MR. BUTLER: Thank you, Your Honor.

7 THE COURT: Given the number of these documents,
8 rather than having me wrestle with them, which is what I've
9 done when there have been fewer binders, I'm going to ask you
10 all to give me copies of the witness book when you have a
11 witness. That will make things go faster, too, I think.

12 MR. BUTLER: Okay.

13 MS. MEHLSACK: Your Honor, if I may. Barbara Mehlsack
14 for the operating engineers and the IBW and UIM. We had filed
15 an amended objection --

16 THE COURT: I read that.

17 MS. MEHLSACK: -- last night, and we just wanted
18 assurance that that was going to be included in the record, as
19 well.

20 THE COURT: It's on the docket and I've reviewed it,
21 so yes.

22 MS. MEHLSACK: Okay, thank you, Your Honor.

23 THE COURT: Yes.

24 MR. BUTLER: Can I have just one moment, Your Honor?

25 THE COURT: Sure.

1 MR. BUTLER: Your Honor, I'd like now, if I could, to
2 proceed to the witness declarations. One of my colleagues will
3 pass up the declarations to you --

4 THE COURT: Okay.

5 MR. BUTLER: -- as we go through them along with the
6 appropriate exhibits. We're going to start, Your Honor, if we
7 could, by offering Mr. Sheehan.

8 THE COURT: Okay.

9 MR. BUTLER: And we'd offer Mr. Sheehan with respect
10 to -- just get my -- we'd offer Mr. Sheehan with respect to
11 three declarations that have been filed that are Joint Trial
12 Exhibits 48, 49, and also Trial Exhibit 48-A dealing with the
13 plan modifications, the auction process, and due diligence
14 efforts. Two of those declarations were prepared on July 19th.
15 The declaration dealing with the auction process and related
16 business decisions was dated July 28, 2009. Mr. Sheehan's
17 declarations have been designated by the parties as highly
18 confidential, and they've been provided to the Court on that
19 basis. And I would offer Mr. Sheehan for cross-examination by
20 any party as part -- and I think, just, I'll start this just
21 try and make it simpler because I can hear more reservations
22 coming. I'm going to offer him in this morning's sessions for
23 cross-examination in connection with the debtors' request that
24 Your Honor approve the plan modification motion. If we go into
25 the second phase of this proceeding, and I seek alternative

1 relief under the 363 sale, it's my intention to come back and
2 offer them again for purposes of those declarations being
3 considered in that context, and give any party who wants to
4 cross-examine them in that context for that relief, the
5 opportunity to do so, if that's acceptable to the Court.

6 THE COURT: That's fine.

7 MR. BUTLER: All right, so with that statement, then,
8 I'd offer Mr. Sheehan and his declarations, again, Joint
9 Exhibits 48, 48-A, and 49 for cross-examination by any party or
10 any questions the Court might have.

11 THE COURT: Okay, does anyone want to cross-
12 examination Mr. Sheehan on his three declarations? Okay,
13 hearing no one, I don't have any questions, having reviewed
14 those declarations.

15 MR. BUTLER: Thank you, Your Honor. Your Honor, I
16 would next like to present Mr. Keith D. Stipp to be cross-
17 examined with respect to his declaration which is Joint Exhibit
18 50, cross-examination by any party or any question that the
19 Court may have.

20 THE COURT: Does anyone want to cross-examine
21 Mr. Stipp? I guess the only question I had, and not
22 necessarily of Mr. Stipp. It could be of you or another party,
23 is it appears to me the -- I wanted to nail down the likelihood
24 of obtaining the emergence capital which he briefly addresses
25 in his declaration. You can address it, he could address it

1 based on his knowledge.

2 MR. BUTLER: Your Honor, with respect to the emergence
3 capital that is being dealt with here, there is emergence
4 capital coming in a couple of different ways, and I'm not sure
5 which one you want. Let me just briefly address each of them.
6 Mr. Sheehan's supplemental declaration, Exhibit 48-A, talks in
7 detail about the capitalization of, what I'm going to call for
8 this hearing, New Delphi, which is that entity that is going to
9 have the assets, substantially all the operating assets that
10 are not either being divested by Old Delphi under DPH Holdings
11 Company or having not been sold to General Motors through its
12 subsidiary. And Mr. Sheehan has outlined the transactions that
13 have been agreed to by General Motors and by a number of DIP
14 lenders to capitalize that company, and that's described in
15 detail in Mr. Sheehan's declaration. And when I get into the
16 argument, I'll go through it in some detail. But the reality
17 is, though, and I think that Mr. Bernstein -- and let me just
18 address a bit of protocol, here.

19 This is the administrative agent's pure credit bid
20 that we'll be talking about a lot today, and so I will, because
21 under the protocol, it is the agent that acts, I will be
22 addressing Mr. Bernstein as the administrative agent.
23 Mr. Bernstein will be quick to remind me that in this
24 particular instance, the administrative agent acts pursuant to
25 directions that it has received from the required lenders under

1 the credit agreement that it has determined in its own judgment
2 to be valid directions that directs it to behave in a certain
3 way or conduct itself in a certain way on behalf of the
4 lenders. And therefore, I fully expect, when I direct certain
5 statements to Mr. Bernstein or I attribute certain things to
6 Mr. Bernstein, that he will, in fact, designate someone on
7 behalf of the, what I would call the principal DIP lenders,
8 those folks who have been the driving forces behind this
9 consensual transaction and who own a very significant part of
10 the DIP facility to speak on their behalf. And as Your Honor's
11 aware, those firms are represented, either the Tranche C
12 collective and that group of firms represented by Willkie Farr,
13 and Mr. Abrams is here in court with his colleagues to address
14 that, and its funds, and there are various funds that are
15 involved, are represented by Dechert, and Mr. Siegel's here in
16 court with respect to those individuals.

17 So as we go through this, even from the debtors'
18 perspective, this is a pure credit bid and I deal with the
19 administrative agent. The fact is, the administrative agent
20 deals with the required lenders. The required lenders are
21 essentially represented by the entities that Mr. Siegel and
22 Mr. Abrams represent. And so as we go through that process, I
23 should just place that on the record because there will be,
24 from time to time, there will be comments that will be made and
25 Your Honor should understand some basis of why we're dealing

1 with this.

2 And in that regard, with respect to the capital
3 commitments I've just discussed, those are outlined in
4 Mr. Sheehan's supplemental declaration in Joint Exhibit 48-A.
5 Attached to Exhibit 48-A is the highly confidential transcript
6 of the auction proceedings that were held over some eighteen
7 hours on this past Sunday and Monday at our law firm which over
8 a hundred people participated starting at 1 o'clock in the
9 afternoon on Sunday and concluding at 7 o'clock in the evening
10 on Monday.

11 And during the course of those proceedings, there was
12 an occasion -- after the pure credit bid was submitted, there
13 was an occasion for the parties to overnight review the pure
14 credit bid, Sunday evening, Monday morning, and there was an
15 extended session on the record in which I asked, on behalf of
16 the debtors, a series of questions to the administrative agent
17 addressing a number of issues. One of the issues was the issue
18 Your Honor talked about, capitalization. Mr. Bernstein and the
19 administrative agent designated Mr. Lefkort, who is one of
20 Mr. Abrams' colleagues, to address those issues, and that is
21 both transcribed in the auction record and is discussed in
22 Mr. Sheehan's affidavit.

23 The second piece of capitalization is the
24 capitalization for DPH Holdings. DPH Holdings capitalization
25 comes from a number of transactions under the proposed MDA.

1 Those would include some funding that comes from the parties
2 including principally from General Motors through a subsidiary
3 -- and when I say General Motors, here, or General Motors
4 Company, I'm talking about new GM to which this transaction has
5 been assigned in Judge Gerber's courtroom, and I am speaking as
6 -- generally, when I say General Motor's, just for the benefit
7 of the GM parties in the room, I'm meaning the particular
8 affiliate or subsidiary or designee under the documents. I'm
9 not going to try to go up through the precise designations,
10 here. But generally, under the MDA, there's funding that
11 occurs from the parties to DPH Holdings. So there's
12 capitalization in that way, there's capitalization in the way
13 that there are retained assets as well as retained liabilities
14 in DPH Holdings, including non-core --

15 THE COURT: You don't need to go through that.

16 MR. BUTLER: Okay.

17 THE COURT: My real concern was, where money is coming
18 from third parties, either DIP lenders or GM, the state of its
19 commitment.

20 MR. BUTLER: Right.

21 THE COURT: I know there is second tier level funding
22 that the DIP lenders are going to seek, but in terms of the
23 actual funding --

24 MR. BUTLER: Right.

25 THE COURT: -- the level of the commitment.

1 MR. BUTLER: Right. Let me state it and then
2 Mr. Bernstein can designate Mr. Abrams to respond or
3 Mr. Siegel. But as it's been represented to the debtors, and
4 the base on which our board of directors exercises business
5 judgment, the commitments associated with all of the GM-related
6 funding are hard and firm, based on the terms of the
7 agreements, and the financing that is being taken on by those
8 parties that are financing the what I'll call New Delphi, those
9 financing transactions have been signed up to and committed to
10 on an initial basis by, essentially, Silver Point and Elliott,
11 and they have -- and I'll talk more about this later, but they
12 have, or they're providing an opportunity for other DIP lenders
13 to participate.

14 THE COURT: Right.

15 MR. BUTLER: But one of GM's requirements, and
16 eventually, Delphi was comforted by this, whatever backstop
17 there may be, these commitments, whatever rights offering, if
18 you will, or syndication, if you will, depending on how you
19 want to think about it of these transactions to other DIP
20 lenders to give them the opportunity to participate, the
21 obligations remain hard with the Silver Point and Elliott-
22 related entities. I think Mr. Siegel and Mr. Abrams can
23 confirm that on the record.

24 MR. BERNSTEIN: Your Honor, I'm going to -- Allen
25 Bernstein, for the administrative agent. I am going to pass

1 the baton both to Mr. Abrams and Mr. Siegel.

2 THE COURT: Okay.

3 MR. SIEGEL: Good morning, Your Honor.

4 THE COURT: Good morning.

5 MR. SIEGEL: I can confirm that what Mr. Butler said
6 is, in fact, the case, that the Elliott funds have backstopped
7 the financing commitment that have put their own balance sheet
8 at risk, here, but they are offering it on to others.

9 MR. ABRAMS: Your Honor, Marc Abrams. The same is
10 true with respect to funds managed by Silver Point Capital.
11 Both Silver Point Cap and Elliott have committed to GM almost
12 900 million dollars in capital that would be utilized to
13 capitalize the New Delphi along with the GM contributions
14 Mr. Butler alluded to. And then, again, as Your Honor has
15 already grasped, there will be a sell-down mechanism to spread
16 that risk. But that sell-down mechanism does not impact the
17 commitment.

18 THE COURT: Okay, thank you. That was my only
19 question that was raised by the Stipp declaration.

20 MR. BUTLER: Your Honor, then, moving on, our third
21 witness in support of our plan modification motion would be
22 that of Mr. Miller. As you know, Steve Miller has been the
23 debtors' executive chairman throughout this process. His
24 declaration is Joint Exhibit number 46, and I would present him
25 for cross-examination for any party in connection with the plan

1 modification motion or any questions the Court might have.

2 THE COURT: Okay, does anyone wish to cross-examine
3 Mr. Miller on his declaration? Okay, I don't have any
4 questions of Mr. Miller, either.

5 MR. BUTLER: Thank you, Your Honor. Your Honor, the
6 fourth witness the debtors would present in support of our plan
7 modification motion is Mr. Craig G. Naylor, our lead
8 independent director on Delphi's board of directors. His
9 declaration is set forth as Joint Exhibit number 47. Again, I
10 present him for cross-examination or any questions the Court
11 might have.

12 THE COURT: Does anyone want to cross-examine
13 Mr. Naylor? Okay, again, this probably could have been of
14 Mr. Sheehan, as well, it could be of you, Mr. Butler, also.
15 One feature of this transaction is the agreement by the winning
16 bidders to make a payment to the stalking horse, Platinum. And
17 I took not only from Mr. Sheehan's supplemental declaration,
18 but from the fact that the board approved the entire
19 transaction, the board concluded that that payment didn't chill
20 the bidding but was made for valid purposes between GM and the
21 bidders on one hand and Platinum on the other. But it wasn't
22 directly addressed by Mr. Naylor's affidavit. I just want to
23 make sure that was something that was considered by the debtors
24 in seeking approval of the bid that they've identified as the
25 winning bid.

1 MR. BUTLER: Your Honor, I can confirm that that's one
2 of the factors that we took into consideration. I would also
3 say -- and I'm going to talk about this later, as well --
4 Platinum Equity has played a critical role in these Chapter 11
5 cases over the last several months, and indeed, in many ways,
6 over the last several years. And they were absolutely critical
7 to the process over the last two months, two to three months,
8 since early April of this year. And that will, I think, become
9 even -- if it's not already apparent to Your Honor from the
10 declarations, I hope to make it very apparent in my closing
11 argument. And that included in participating in this auction
12 process.

13 As Your Honor is aware, when we filed our plan
14 modification motion on June 1st, we filed it in a transaction
15 with Platinum Equity and General Motors when the debtors had
16 concluded, based on the representations then having been made
17 at that time which were relevant at that time, that the lenders
18 weren't prepared to participate in the transaction and the
19 alternative to a deal was liquidation. And we were able to
20 work out that transaction and then move forward with it, and
21 that has led to this auction process. And the earlier hearings
22 on June 10th when Your Honor approved a resolicitation and
23 other procedures for this, Your Honor, on the record, at the
24 request of the lenders and the committee and others, Your Honor
25 wanted to make very sure that our duty under the June 1st

1 agreement to consider unsolicited alternative transactions in
2 accordance with our fiduciary responsibilities had as much
3 transparency as possible so that parties close to this
4 transaction could see it up close and examine it. You asked
5 the creditors' committee to monitor that, which they did
6 faithfully throughout this process, and we administered it.
7 Under the supplemental procedures, which were Exhibit N to the
8 original order, the modification procedures order, we qualified
9 three third-party bidders that were being considered and did
10 due diligence and considered transactions. And none of those
11 bidders, as Your Honor's aware, none of those bidders, by July
12 10th, which was the deadline for the submission of proposed
13 qualified alternative transactions, submitted any proposals.
14 That was one phase of this process, and so while it didn't
15 particularly surprise the debtors in terms of the outcome in
16 connection with that because of the complexity of this process
17 and the various risk allocation, other issues that have to be
18 considered, we ran that part of the process. And a good
19 portion of, I think, what Your Honor -- at least the debtors'
20 belief of what Your Honor wanted us to do from June 10 forward,
21 was to run a transparent process that would give the parties
22 that are in this case and invest in this case an understanding
23 of whether a third-party would come in and propose a higher or
24 better alternative transaction. And they would have the
25 information upon which to do that. We ran that process, July

1 10th came, those three qualified bidders did not submit an
2 alternative.

3 At the same time we were going through this process,
4 as Your Honor is also intimately aware of, we had any number of
5 chamber conferences and discussions between the parties about
6 how a pure credit bid might be submitted. And Your Honor
7 recognized, as the debtors did, that a pure credit bid is
8 different. It's different in terms of the kinds of remedy it
9 is, it is different under 363(k), and Your Honor concluded in
10 the Court's judgment that some but not all of the supplemental
11 procedures should apply to a pure credit bid. And Your Honor
12 crafted with the parties and entered orders, supplemental
13 orders that laid forth procedures to address that pure credit
14 bid. So when we got to the auction process, we ended up in the
15 auction process in, really, as our press release and others
16 indicated, really running a process between the original June
17 1st transaction in which General Motors was a party along with
18 Platinum, and a pure credit bid, in which the lenders had taken
19 advantage of paragraph 46 of the modification procedures order
20 which had set forth the ability, specifically, for General
21 Motors to negotiate with third parties and to participate in
22 transactions with them. Relief, Your Honor, that could not, as
23 Your Honor, I think, recognized at a prior hearing involving
24 Platinum, could not have been put in place without Platinum's
25 consent. There was an arrangement put in that allowed,

1 essentially, GM to play, if you will, on both teams. And that
2 made for a difference in the dynamics for the auction process.
3 And would that Your Honor had been in our auction room over the
4 weekend where these 125 people, all told, participated at one
5 point, you would have seen that, in fact, the various tables
6 were around, the bidder tables, there was Platinum on the one
7 hand, there were the administrative agent on the other with the
8 DIP lenders behind him, and right in the middle was General
9 Motors at its own table because it, in fact, was negotiating
10 with both sides and was parties to both and actually had
11 committed to the company and committed to the Court, and
12 commits here, today -- because we've designated the Platinum
13 transaction as the alternate transaction -- that it would
14 fulfill its responsibilities under either, and the modification
15 procedures already gave it that ability. That dynamic, set up
16 by the modification procedures order, and in light of the fact
17 that there were the three third-party, if you will, sort of,
18 independent qualified bidders chose not to continue to
19 participate in the process really led from July 10th through, I
20 believe, this morning, a series of negotiations and discussions
21 which the company has encouraged that would cause the bids to
22 be presented to be the highest and best bids on both sides, but
23 also encouraged the parties to try to work together to come to
24 a consensual transaction. It really was a continuation of the
25 efforts Judge Morris had begun both quite capably in the

1 judicial mediation to try to bring these parties together. And
2 so I -- well, I can assure you that up until the minutes before
3 the auction was closed, I think Mr. Rosenberg would agree with
4 me as the monitor of the auction, there was no chilling of the
5 bidding going on between those parties, but there was -- and I
6 need to say on this record -- there was the unusual dynamic of
7 having General Motors involved in both bids, and there was the
8 desire of the debtors, and I think others, the people involved
9 in the auction of trying to have an environment where we ended
10 up at the end of the auction with the best MDA that did not
11 involve the DIP lenders, and the best pure credit bid MDA that
12 involved the DIP lenders. So we'd have those two transactions
13 to look at. I think we accomplished that. As part of those
14 discussions -- and these discussions, by the way, did not
15 include the debtors, but we knew that they were going on --
16 Platinum, General Motors, and the DIP lenders that constituted
17 the required lenders had a series of discussions, and then they
18 placed an agreement on the record -- and it is on the auction
19 record, it is attached and described; we had it transcribed --
20 it is attached to Exhibit 48-A -- set forth in detail this
21 understanding that had been reached, and we did, both with the
22 monitors of the auction, which are the creditors' committee,
23 the UAW and the IUE -- although the IUE did not participate --
24 but with the monitors that did participate, and then
25 ultimately, with the board of directors, we reviewed all of the

1 events that had transpired at the auction, including the
2 agreement by those two parties to pay 30.5 million dollars in
3 expense reimbursement and other payments to Platinum. And
4 coupled with that was an understanding that those parties would
5 continue to work with each other about Platinum's potential
6 involvement in the pure credit bid. And as I understand it,
7 those discussions have been continuing over the last several
8 days. We may have something to say about that before the
9 record, here, today, is closed. The debtors viewed that
10 statement, and we consulted with Mr. Rosenberg about this. The
11 cofiduciaries of the case viewed those payments as implicating
12 1129(a)(4) and believe that they needed to be publicly
13 disclosed and brought to Your Honor's attention, and we believe
14 they need to be approved under the Bankruptcy Code.

15 THE COURT: Even though they're coming from a third --

16 MR. BUTLER: Correct.

17 THE COURT: -- party source, or two third-party
18 sources?

19 MR. BUTLER: And the reason for that, Your Honor, is
20 because those two party sources, if Your Honor approves this
21 transaction, will actually be acquiring property of the estate.
22 And I think a literal reading of 1129(a)(4) says if you're a
23 party who's acquiring property of the estate, and you make
24 payments in connection with the consummation of the plan, those
25 fall, arguable, within the Court's purview. And therefore, we

1 wanted there to be -- and particularly in light of Your Honor's
2 prior ruling when the debtors had brought an expense
3 reimbursement motion that was contested by some of these
4 parties for an amount that was not -- that's substantially
5 similar to what was agreed to, we believe that this needed to
6 have the transparency and light of day. The debtors,
7 obviously, if we -- from a business judgment perspective, as
8 Your Honor knows, the debtors believed, under all the
9 circumstances, the prior motion was reasonable. So you can
10 understand the board of directors, when they considered this
11 and added to it the support of the DIP lenders and General
12 Motors and the lack of opposition of the monitors at the
13 auction to this transaction, although Mr. Rosenberg agreed with
14 me that this needed to come forward under 1129(a)(4), we
15 believe that it was appropriate and do believe it's
16 appropriate, and do believe Your Honor should approve it as
17 part of this transaction.

18 THE COURT: Okay. All right. I don't have any other
19 questions of Mr. Naylor.

20 MR. BUTLER: Thank you, Your Honor. Your Honor, the
21 fifth witness in support of our plan modification motion that
22 we'd like to present is William R. Shaw, the managing director
23 of Rothschild. His declaration is Joint Exhibit 51. And we're
24 presenting him for cross examination or for any questions the
25 party -- that Your Honor may have.

1 THE COURT: Okay. Does anyone want to cross examine
2 Mr. Shaw?

3 (Pause)

4 THE COURT: Okay. I don't have any questions of
5 Mr. Shaw.

6 MR. BUTLER: Thank you, Your Honor. Your Honor, our
7 sixth witness is Randall S. Eisenberg, who is a senior managing
8 director of FTI Consulting. His declaration is at Exhibit 52.
9 I do want to point out, Your Honor, that this testimony, as we
10 have indicated in our plan modification order, is intended to
11 be introduced in connection with Your Honor's findings with
12 respect to the best interest test under Section 1129, and not
13 for other purposes. And the findings we've asked you to make
14 in your order are limited to that purpose as it relates to
15 certain of the declarations -- certain aspects of
16 Mr. Eisenberg's declaration.

17 With that statement, Your Honor, I would offer
18 Mr. Eisenberg for cross examination or for any questions the
19 Court might have.

20 THE COURT: Okay. Does anyone want to question
21 Mr. Eisenberg?

22 (Pause)

23 THE COURT: All right. I have no question of him
24 either.

25 MR. BUTLER: Your Honor, I'd like to move to voting,

1 then, and the voting declarations and address voting issues at
2 this time.

3 We start with the declaration of Evan Gershbein.
4 There are three declarations. They are at Joint Exhibits 39,
5 40 and 41. Mr. Gershbein is the senior managing consultant of
6 Kurtzman Carson Consultants LLC. And --

7 THE COURT: You don't need to give me those. You
8 don't need to give me those.

9 MR. BUTLER: Okay. And I also, at the same time,
10 would present the declaration of Jane Sullivan, which is Joint
11 Exhibit number 42. Ms. Sullivan is the executive director of
12 Financial Balloting Group LLC. In connection with presenting
13 those declarations, Your Honor, I would call your attention to
14 Exhibit C to the declaration of Ms. Sullivan, which is also
15 contained in the demonstratives.

16 If I may, Your Honor, I have a couple of the
17 demonstrative books I could pass up, if I may --

18 THE COURT: Okay.

19 MR. BUTLER: -- for easier reference. And Joint
20 Exhibit 53 has in it, which is -- and it's Chart 43 is the
21 proper reference, for the record -- shows the voting summary by
22 class. And for purposes of today's hearing, there are five
23 classes that were impaired that voted in favor of the plan.
24 The balance of the classes voted against the plan.

25 And the parties that voted in favor of the plan, in

1 addition to three tax collectors -- in fact it was the same tax
2 collector with secured claims voting in three different
3 classes -- there was also classes of 1C-2 through 12C-2,
4 involving the PBGC claims. The PBGC is by far the largest
5 prepetition creditor of these cases. And they voted in favor.
6 And General Motors voted all of its claim in favor as well, at
7 1D to 12D.

8 I'm going to address a matter with the creditors'
9 committee in just a moment, but before I do that, Your Honor,
10 I'd like to get this evidence into the record. And so I
11 present both Mr. Gershbein and Ms. Sullivan for cross
12 examination by any party or for any questions the Court might
13 have.

14 THE COURT: Okay. Does anyone want to cross examine
15 Mr. Gershbein on his voting declaration? All right. Does
16 anyone wish to cross examine Ms. Sullivan on her voting
17 declaration? All right. I don't have any questions of them,
18 either.

19 MR. BUTLER: Thank you. Your Honor, let me again
20 refer to Joint Exhibit 53, Chart 43, which is this large chart
21 that's in the demonstrative. And obviously, one of the groups
22 of creditors that voted against this was class 1C-1, the Delphi
23 DAS debtors. And while there are other classes that voted
24 against it, that is the class that had the most voting going
25 on, the most ballots cast, in connection with this. And

1 Mr. Gershbein and Ms. Sullivan summarized those. This
2 particular exhibit has only the percentages, but there were a
3 large number that voted against the plan.

4 I believe that there was a direct correlation to that
5 vote with the then recommendation of the creditors' committee,
6 which, as Your Honor knows, under the consideration that had
7 then been allocated to them, the creditors' committee
8 determined, in their good-faith deliberations, that they could
9 not recommend, notwithstanding what their assessment of where
10 they fall in the absolutely priority waterfall, they could not
11 recommend that the modifications be approved.

12 That has led to what I was confident would be --
13 hopeful that that was going to be the case, which was further
14 negotiations among the stakeholders. There was, as we've
15 reported, and I indicated now -- there were resolutions of
16 objections reached, both with the creditors' committee and
17 Wilmington Trust to resolve the objections by the creditors'
18 committee, at docket 17034 and at 18291; and with Wilmington
19 Trust at dockets 17169, 18313 and 18471.

20 And that has -- with respect to the potential
21 distribution to holders of general unsecured claims and the
22 PBGC general unsecured claims under what I'll call the
23 waterfall schedule and the master disposition agreement, there
24 was an increase in the maximum from 180 million to 300 million.
25 And there was an agreement that starting at distributions in

1 excess of 7.2 billion, there would be for every -- I gather the
2 way I'm supposed to say this now is, for every sixty-seven and
3 a half cents of distributions under the waterfall, thirty-two
4 and a half cents would also be distributed to the holders of
5 those claims, which are -- and to emphasize them, those are
6 unsubordinated general unsecured claims.

7 Based on those negotiations, I think, based frankly on
8 the creditors' committee's role as a monitor of these
9 transactions since June 10th and their participation in the
10 assessment of all the due diligence activities that went on,
11 the conduct of the parties, their involvement in overseeing the
12 auction, all the things that weighed into this, I believe that
13 the conclusion of the creditors' committee now, is that in fact
14 they believe the plan modification motion -- and Wilmington
15 Trust as indenture trustee, believes the plan modification
16 motion should be approved and that I believe Mr. Rosenberg is
17 going to stand and confirm that he believes and the committee
18 believes that that approval -- it would be appropriate for the
19 Court to invoke the cram-down provisions of 1129(b) to
20 accomplish that result, as it relates to the class that they
21 represent.

22 THE COURT: Okay. Mr. Rosenberg, do you want to state
23 your views?

24 MR. ROSENBERG: Your Honor, obviously, this is a
25 rather unusual situation where the creditors' committee urged a

1 negative vote. The negative vote was overwhelmingly obtained.
2 But significant substantial increases in consideration were
3 subsequently negotiated, such that the creditors' committee now
4 feels that the result meets the lowest bounds of
5 reasonableness, I suppose is the best way to put it.

6 So it is an unusual situation where the committee has
7 withdrawn its objection to the plan amendment motion, not, I
8 would add, to the 363, if we get to that. Because the
9 creditors' committee feels that the renegotiated consideration
10 is, as I suggest, within the lowest bounds of reasonableness.

11 So it is unusual, but -- and it obviously would have
12 been far better to have negotiated a result for a vote that the
13 creditors' committee could have recommended. That didn't
14 happen. But standing here today, we do withdraw our opposition
15 to the amended plan.

16 THE COURT: Okay. Thank you.

17 MR. BUTLER: Your Honor, I believe that Mr. Fox will
18 stand to confirm that Wilmington Trust, being one of the
19 principal members of the committee, and having participated in
20 virtually all the same aspects of this proceeding that Mr.
21 Rosenberg did, similarly has agreed to withdraw their
22 objections and support requested of the modified plan. There
23 is a mechanism that would call for a capped amount of their
24 fees and expenses to be paid. It's -- that cap, actually, in
25 some respects is lower than the cap under the prior

1 confirmation order. But that that cap amount be paid to them
2 invoking the reasonableness review that is set forth in the
3 prior confirmation order.

4 THE COURT: Okay.

5 MR. FOX: Edward Fox from K&L Gates for Wilmington
6 Trust, Your Honor. Mr. Butler is correct. I'd just join in
7 the comments that Mr. Rosenberg made with respect to the stance
8 that we're in. But we believe at this time it is appropriate
9 to withdraw the objection, with respect to the plan
10 modification, not with respect the separate 363.

11 THE COURT: Right.

12 MR. BUTLER: Your Honor, let me just comment on the
13 current status of the modified plan and of the proposed plan
14 modification order. The plan itself was first filed on June
15 1st -- excuse me -- filed on June 1st, that's correct. But the
16 plan, after it had been reviewed by Your Honor at the June 10th
17 hearing, the plan that Your Honor ordered resolicitation of
18 certain classes on to check their -- to resolicit acceptances
19 or rejections of the plan modifications, that was filed
20 publically at docket number 17030 and is Joint Exhibit 1 to
21 this record.

22 The debtors then made further modifications to the
23 plan in connection with negotiations with its stakeholders. It
24 included those modifications in an appendix to its omnibus
25 reply to objections that were filed. It was filed on July 27th

1 at docket number 18659. And those modifications are Joint
2 Trial Exhibit 632.

3 There have been further negotiations that have
4 occurred with respect to the modified plan. And that black
5 line is set forth in Joint Exhibit 8. And Joint Exhibit 8 is
6 the current form of the modified plan. Prior to closing this
7 record, I'll want to consult with the principal parties to make
8 sure that there's nothing else to go in with respect to that.
9 But the current state of the modifications is Joint Trial
10 Exhibit 8.

11 With respect to the proposed form of plan modification
12 order, the order as originally proposed by the debtors after
13 consultation, but not acceptance -- but consultation with many
14 of its stakeholders, was also filed as an exhibit or an
15 appendix to our omnibus reply on July 27th. Again, at docket
16 number 18659. And it's also been marked Joint Trial Exhibit
17 632.

18 Since that time, over the last couple of days, we have
19 made further progress on obtaining a consensual form of order.
20 The state of that progress as of midnight last night is set
21 forth in Joint Trial Exhibit 11. And there's a black-line at
22 Joint Trial Exhibit 9.

23 THE COURT: And that's the one dated July 28th?

24 MR. BUTLER: Correct.

25 THE COURT: Okay.

1 MR. BUTLER: And that one -- that actually represents
2 the state of the order as of midnight, getting ready for
3 today's hearing.

4 Your Honor, I'm not going to address those matters in
5 this morning's session any further. There are continued
6 discussions that are going on between the parties into the form
7 of those, and we will address those in the afternoon session,
8 as it relates to those matters. But that's the current -- I
9 just wanted to make sure we had the current state of those
10 documents on the record.

11 THE COURT: Okay. And the plan is -- the modification
12 is the one dated July 28th also, right?

13 MR. BUTLER: Correct.

14 THE COURT: Okay.

15 MR. BUTLER: Your Honor, what I'd like to do now is
16 move to an overview of objections, and make some statements
17 about those objections, and find out if we can let some of
18 these folks go home, if they want to, unless they want to stay
19 to the end of the day or whenever this record is completed.

20 We have, Your Honor, filed a summary of the objections
21 by nature of objection. Those are listed at Appendix B to our
22 reply at that same document filed at docket number 18659, and
23 at Joint Exhibit 32, which listed by category the objections as
24 the debtors understood them, after having reviewed all of the
25 objections.

1 And we also filed as a joint trial exhibit, the
2 objection-by-objection summary which is quite long, because
3 there were a lot of objections that were filed to the plan.
4 And those are set forth at Joint Trial Exhibits 215 and 216.
5 There were, in total, some 1,900-plus objections filed to the
6 plan, because we construed each of the letter objections
7 written either by severance parties or by pensioners, who wrote
8 Your Honor and complained about various elements of actions
9 that have occurred in this case -- any of those letters that
10 were filed subsequent to the -- that were docketed subsequent
11 to the 10th of June, we have deemed to be an objection to this
12 hearing.

13 It's the debtors' position, based on interpreting Your
14 Honor's order, that any of the letter objections that were
15 filed prior to June 10th, were subsumed within Your Honor's
16 order of June 16th, relating back to June 10th, which overruled
17 all objections as it related to those at that time. So there
18 are some 1,900-plus objections.

19 First let me deal with contract-specific objections.
20 There were sixty-four objectors that filed a total of ninety-
21 two contract-related objections, regarding the assumption and
22 assignment, notices of nonassumption and assignment, cure
23 notices and related matters, that were, after consultation with
24 Your Honor previously, adjourned summarily to the August -- to
25 a hearing at 10 a.m. on Monday, August 17, 2009, and Your

1 Honor's findings in today's hearing with respect to those
2 objections -- or with the contracts that those objections
3 relate to, will be subject to those objections; and Your
4 Honor's resolution of those objections, if they're not
5 consensually resolved, on August 17th.

6 And therefore, we're not proceeding on any of those
7 objections today.

8 THE COURT: And you've provided notice to all of those
9 parties of that?

10 MR. BUTLER: We did, Your Honor. We provided notice
11 in a number of different ways, including having people call
12 them up -- people on the telephone and send e-mails. We
13 filed -- and our notice of when the auction results were
14 completed, we were required to send out another notice relating
15 to the fact that there's a new company buyer under the proposed
16 transaction. We had to send notice out to everybody. As Your
17 Honor recalls, from your prior procedures, that gives these
18 parties the right to file a supplemental objection, but only as
19 to the new company buyer, not as to cure other matters for
20 which objection deadline -- and in that notice, we told
21 everybody it was August 17th.

22 THE COURT: Okay.

23 MR. BUTLER: We sent e-mails it was on August 17th.
24 We've actually negotiated with a lot of people and said you
25 don't need to come today. Some of those people are still here

1 because I think they wanted to hear me say what I'm saying on
2 the record.

3 THE COURT: Okay.

4 MR. BUTLER: So I'm saying on the record now at the
5 front end of the hearing so that they can take comfort that
6 their objections will be considered by Your Honor if they are
7 not otherwise resolved, on August 17th.

8 Your Honor, I also --

9 THE COURT: Well, before you move on to the next
10 category. I guess, if anyone is present who falls into that
11 category feels they need to say something now, as opposed to on
12 August 17th, this is the time to do it.

13 MR. MEARS: Your Honor, I'm not planning to say
14 anything else. This is Patrick Mears on behalf of Autocam
15 Corporation. But we have had a number of discussions with
16 Mr. Butler and his colleagues, which I thank Mr. Butler for
17 arranging.

18 There are a number of contractual issues involved
19 here, just to briefly state, whether or not the purchase orders
20 can be considered separately from the long-term contracts, and
21 if they are, are they to be treated as post-petition contracts
22 not subject to Section 363, and also the adequate assurance of
23 future performance issues.

24 There are two contracts of ours that have been sought
25 to be assumed and assigned. We understand that maybe more will

1 be coming, so that's a concern of ours as well. We just want
2 to make sure of the following: that all other Section 365
3 objections, and if applicable, state law objections, to
4 assignment are preserved. And I think they are, based on what
5 I heard Mr. Butler say.

6 Secondly, if assignment notices are sent in the
7 future, we would have, obviously, the right to object to those.
8 There's some language that --

9 THE COURT: You mean with regard to a new cont -- a
10 different contract?

11 MR. MEARS: A different contract. There's some
12 language in the order that if you read it one way it creates an
13 ambiguity, at least as I saw it. And we would be able to
14 object on all the panoply of grounds that may be applicable.
15 And that if some or all of the remaining purchase orders are
16 sought to be assigned by Autocam as severable contracts, post-
17 petition contracts not subject to 365(f), then we would have
18 the right to object to those assignments in whatever court
19 would be entitled to hear it. It could be this Court; it could
20 be some other Court. And those issues would really involve,
21 most likely, nonseverability and adequate assurance of future
22 performance. The severability, just briefly, relates to post-
23 petition purchase orders that relate to pre-petition contracts.
24 And there may be some reason that the debtor wants to sever
25 them.

1 So in light of all that, we have no problem with
2 adjourning the hearings to the 17th. You've already done it,
3 but I did want to say that on the record.

4 THE COURT: Okay.

5 MR. MEARS: With respect to the sale order, there are
6 some problematic provisions in them. We've discussed that with
7 Mr. Butler's colleagues, but right now we understand that
8 that's not before the Court. This is kind of a two-step
9 process.

10 THE COURT: That's right.

11 MR. MEARS: Thank you.

12 THE COURT: Thank you.

13 MR. BUTLER: Your Honor, Mr. Mears and I have known
14 each other for many, many, many years, and I understand the
15 reservation of rights he's put on the record. Obviously, the
16 debtors and other parties reserve their rights to the various
17 positions he might make. I don't think we need to debate them
18 today, and we'll deal with them on August 17th.

19 THE COURT: Okay.

20 MR. POWLEN: Your Honor, you're getting a bit of a tag
21 team. David Powlen, also from Barnes & Thornburg. And
22 Mr. Mears spoke to Autocam. The firm has also appeared and
23 filed objections on behalf of five other parties related to the
24 assumption and assignment of their contracts. And Mr. Butler
25 and I also had a chance to visit, prior to the commencement of

1 this hearing, with respect to paragraph 35 on page 66 of the
2 proposed order.

3 THE COURT: This is the sale order or the plan
4 modification order?

5 MR. POWLEN: This is the sale order, Your Honor.

6 THE COURT: All right. But that's -- okay.

7 MR. POWLEN: And it --

8 THE COURT: I don't want to -- we don't need to get
9 into that one.

10 MR. POWLEN: I understand, but we've confirmed and
11 he's willing to agree on the record that nothing in paragraph
12 35 is intended to impact in any way on the parties' objections
13 with respect to the assumption and assignment of contracts.

14 THE COURT: Okay.

15 MR. BUTLER: I'll just say, Your Honor, I don't
16 believe -- based on how we have taken Your Honor's guidance
17 about this hearing, I don't think we could adjourn the
18 assumption and assignment objections to August 17th and then
19 prejudice those objections by either of the two orders that
20 might be entered today.

21 THE COURT: Okay.

22 MR. BUTLER: Thank you.

23 MR. VIST: Good morning, Judge. Gary Vist on behalf
24 of American Aikoku. We have filed three objections. Two of
25 them are objections to notices of assumption and

1 nonassumption that we got in the past couple of weeks. I
2 understand those will be adjourned.

3 The third objection that we filed is actually an
4 objection to the plan itself. And the gist of the objection is
5 that the plan allows the debtor to violate the stipulation that
6 we have entered into about a year and a half ago. And I would
7 like some guidance as to whether that objection will be heard
8 today or whether it will be postponed as well.

9 THE COURT: I think it would be heard today.

10 MR. VIST: Thank you, Judge.

11 THE COURT: Okay. All right. Well, is there anyone
12 else? No. All right. Anyone on the phone, or the gentleman
13 from Barnes & Thornburg or anyone else who's here just on a
14 contract issue, you can be excused. And that would go for any
15 witness that doesn't want to stay around too.

16 MR. BUTLER: Your Honor, I also would like to address
17 the letter objections that were dealing with some -- there were
18 some 600 plus severance related letter objections filed with
19 respect to the modified plan. And the concern expressed by
20 those parties was that they might not receive all of the
21 installment severance that they were entitled to.

22 Just by way of reference, Your Honor, back in 2005
23 when these cases were filed, Your Honor entered a first-day
24 order that allowed us -- that authorized us but did not direct
25 us to be able to continue our human capital policies, but it

1 was clear in that order that we couldn't -- by continuing them
2 we couldn't create any administrative claims in the case,
3 necessarily.

4 There is, however, as Your Honor knows, a Second
5 Circuit precedent here as to parties severed in a -- persons
6 severed in a Chapter 11 case. Absent any other determination
7 that might be case-specific, the Second Circuit's given pretty
8 specific guidance that those are administrative claims, that --
9 there are some exceptions to it, I believe, but there has
10 been -- and I think, frankly, in recent years, a number of
11 courts have been seeking to interpret the guidance from the
12 Second Circuit as to how it applies in today's world. But
13 nonetheless --

14 THE COURT: It's an issue.

15 MR. BUTLER: -- that's been hanging out there.

16 THE COURT: Okay.

17 MR. BUTLER: The parties had -- the principal parties
18 to this transaction had negotiated with each other and have
19 agreed that those objections need not be considered by Your
20 Honor because the terms of this transaction, if you approve it,
21 will provide the wherewithal for those obligations to be
22 continued to be paid because the new Delphi would essentially
23 assume the payment of those obligations. But there would be an
24 option -- and that would be over time, over installment basis
25 time -- but there's also going to be an option for parties to

1 receive seventy-five percent of the remaining severance
2 obligations in a lump sum now, prior to the effective date of a
3 modified plan.

4 And so parties that want the full pay-out and want to
5 assume the risks of a full pay-out, because as we've all
6 learned in this case and in other cases, the future is never
7 assured in any transaction. And if people want to have the
8 comfort now, the parties have agreed to make capital available
9 to pay out seventy-five percent of any future payment stream on
10 a lump sum basis. And that agreement and the agreement to
11 otherwise assume these liabilities, I think eliminates any
12 potential objection by those 600 objectors.

13 THE COURT: All right. Let me just address the early
14 payment option. That would then be a provision of the MDA that
15 would go into effect prior to the effective date of the plan?

16 MR. BUTLER: Right. Yes, Your Honor. We
17 essentially -- and another way of thinking about it is we
18 actually have -- I don't know if it's necessarily the MDA
19 they're going to effect prior to the plan, but I think I'm
20 saying this correctly and I will get help I know, today, if I
21 say things incorrectly. But I believe the way in which that
22 particular matter will be implemented is that the debtors would
23 essentially --

24 THE COURT: It wouldn't violate the MDA --

25 MR. BUTLER: Right.

1 THE COURT: -- for them to make that type of payment.

2 MR. BUTLER: Correct. The debtors will make those
3 payments prior to the effective date. Our source of capital
4 for that will be the bridge financing that are being provided
5 by the DIP lenders under the DIP credit agreement through the
6 use of cash collateral accounts and by General Motors under the
7 GM arrangement. Both of those would -- if Your Honor approved
8 these plan modifications, we will have three sources of funding
9 in -- the debtors, to bridge ourselves to emergence. It will
10 be use of cash collateral accounts that we previously couldn't
11 use that are for the benefit of the DIP lenders; use of the
12 remaining funding under the LSA or the GM arrangement, as it's
13 known in this Court, with General Motors; and the repatriation
14 of excess global liquidity that we would then be able to
15 repatriate and use. And there's a series of agreements that
16 have been worked out with the DIP lenders. And this would not
17 be on the MDA side; this is actually on the administrative
18 agent side in agreements that will be documented.

19 In fact, there's an exhibit, accommodation agreement
20 amendment number 19, that does that, and there's, I believe, an
21 amended and restated GM arrangement on the GM side that deals
22 with how that will all work and how that fits together. And
23 the only thing left to be done is to continue those
24 arrangements by further amendment to be coterminous with the
25 MDA. And that would happen after -- presumably promptly after

1 Your Honor entered a plan modification, if Your Honor was
2 prepared to do that.

3 So that will be the source of our liquidity. One
4 important feature of this transaction is that we will have
5 bridge liquidity to bridge us through a closing date which we
6 hope to be before the end of the third quarter of this year
7 and -- the quarter that we're currently in or we will soon be
8 in -- that we're currently in. And it will be sufficient to
9 fund the settlements, among other things, Your Honor.

10 THE COURT: Okay. Does anyone who filed one of these
11 letter objections want to be heard on them? All right. I
12 agree with the debtors that these objections, given their
13 undertakings and agreements in connection with the MDA, are
14 moot. To the extent they would not be, they're overruled. I
15 believe there's sufficient funding as well as contractual
16 commitments for these obligations to be paid.

17 MR. BUTLER: Thank you, Your Honor. All right.
18 Continuing, Your Honor, with a summary of the sort of groups of
19 objections. We obviously had objections filed in addition,
20 those filed by the creditors' committee and Wilmington Trust as
21 indenture trustee. We had comprehensive objections filed by
22 the administrative agent and two groups of DIP lenders at
23 dockets number 18283, 18296, and 18300. Several of those
24 objectors have filed supplemental statements in the last
25 twenty-four hours, and essentially, I think the best way to

1 summarize those is, assuming Your Honor enters the plan
2 modification order that approves the debtor's recommendation
3 accepting the pure credit bid on terms that are mutually
4 acceptable to the parties, including to those parties, they
5 will not pursue these objections, which I think is probably a
6 foregone conclusion to everyone, but I still need to check that
7 box and move on.

8 THE COURT: Okay.

9 MR. BUTLER: Now, if you look at the rest of the
10 objections, Your Honor, and we're focused on the objections
11 we've classified in various areas now. I'll come back to them.
12 First I'd just like to summarize them and I'll come back to
13 individual objections.

14 In addition to the contract related objections,
15 there's nine other basic groups of objections, and this is
16 filing the groupings that we put in Joint Exhibits 215 and 216
17 and attached to our reply which is Joint Exhibit 632. And
18 they're as follows. There is some objections to the exercise
19 of business judgment by the debtors -- objecting to our
20 business judgment. Mr. Kennedy in the IUE, for example, has
21 raised that objection in his objection. So have a number of
22 the letter objectors. And so I'm going to come back to that in
23 a few minutes.

24 The second broad category of objections are objections
25 by current and former employees, including the unions, and many

1 of those are pension related objections. In fact, there are
2 well over 1,000 letter objections that are from pensioners that
3 object to what the debtors have done to date and what we are
4 proposing to do in connection with pension related matters.
5 And I'm going to come back to that because that, I think, is an
6 area of focus in this hearing.

7 The next category are government agency objections.
8 There were many agencies we had to work through, both federal
9 and state, in connection with preparing for this plan
10 modification hearing. But the only surviving objection is that
11 of the Michigan's Workers' Compensation Agency at docket number
12 18264. And while I'll address that down the line, my
13 understanding, as I've been advised, is that the state of
14 Michigan is going to rely on their pleadings that they filed on
15 their objection and are not going to present argument today.
16 Counsel's here and if I said it wrong they should tell me, but
17 I believe that's what I've been advised. So we'll have to deal
18 with -- in category three we'll have to deal with Michigan
19 Workers' Comp.

20 In connection with the fourth category, which are
21 taxing authorities -- we had a lot of taxing authorities to
22 talk about in a lot of places. We have resolved, I believe,
23 the objection -- there are only two remaining objections, one
24 of Howard County, Indiana at docket number 18218, which I
25 believe we have resolved, and one of the Texas taxing

1 authorities which is at docket number 18194, which I think at
2 the moment may not be resolved, but I have to sort that out in
3 a few minutes with some of our colleagues.

4 THE COURT: Okay.

5 (Pause)

6 MR. BUTLER: I'm advised, Your Honor, that Howard
7 County may want to address the Court on a limited aspect of its
8 objection, so we may have two of those objections to deal with
9 under taxing authorities.

10 With respect to areas that have been settled, there
11 are no remaining objections on four broad areas that would, I
12 think, otherwise have been contentious by parties. There are
13 no longer any objections outstanding to release and discharge
14 obligations and mechanics under the plan. There are no
15 outstanding objections to classification, impairment, or voting
16 issues, which is category 6. There's no objections remaining
17 to the substantive consolidation mechanics of the plan. And
18 there are no longer any objections to the 1129(a)(9) mechanics
19 and operation of that under the plan.

20 There are some miscellaneous objections -- that's
21 category 9 -- which we'll have to come back and deal with. And
22 perhaps the most -- while we think it can be rather easily
23 dealt with by the Court, on the face of the papers the most
24 consequential of that is an objection filed by James Sumpter,
25 who filed both -- who actually filed it in the form of a COBRA

1 motion at docket number 18366. And we filed an opposition at
2 docket number 16457. But it's actually -- it's been construed
3 for these purposes as an objection to the plan.

4 So Your Honor, when we look at the various categories
5 of objections, there are a few individual objectors, you know,
6 an objector in governmental agency objections, two objectors in
7 taxing authorities, some miscellaneous objections dealing with
8 the COBRA matter. And then there is, I guess, under
9 miscellaneous objections, I would add -- because I don't know
10 that it has been resolved yet -- is we do have a series of
11 objections filed by our former plan investors. And I need, on
12 a break, to see where those discussions are before I address
13 the Court on those.

14 Our approach, Your Honor, would be to take those
15 objections -- I'd like, Your Honor, to ask for a brief recess
16 to consult with some of the parties, principal parties in this
17 case about where we are on some of these objections, and then I
18 would propose to go through the categories and take them
19 category by category and go through, if it's all right with
20 Your Honor, and litigate the objections and deal with them.

21 THE COURT: Okay.

22 MR. BUTLER: And then after we get through all those
23 objections, and at least get them on the record, Your Honor may
24 want to obviously -- you know, if we could just get argument on
25 the record at least from both sides. We're going to want to

1 take a break and deal with any final issues relating to the
2 form of order and the form of the plan. And then I don't know
3 if the other parties do, but the debtors certainly have a
4 closing argument we want to present.

5 THE COURT: Okay. Well, I may well rule on the
6 objections seriatim, which may affect the length of closing
7 argument.

8 MR. BUTLER: Right.

9 THE COURT: So how much -- I can give you half an
10 hour. I can give you an hour. I can give you ten minutes.
11 How -- what are you looking for here to consult with some of
12 the people who may have --

13 MR. BUTLER: Can I have just a minute, Your Honor?

14 THE COURT: Sure.

15 (Pause)

16 MR. BUTLER: Your Honor, seeing as I have a track
17 record in this Court and in the board room of giving time lines
18 that people no longer have great confidence in, I will tell
19 Your Honor that I've decided, as I always have all along in
20 this case -- I've always decided that the shortest time line is
21 the best because you try to push people to it with no assurance
22 that we'll hit the mark. And so I think, Your Honor, I'd like
23 to take a fifteen minute adjournment. We'd advise --

24 THE COURT: Okay.

25 MR. BUTLER: -- chambers if we need any more time.

1 THE COURT: That's fine. Let me just -- is there
2 anyone else who thinks they have another objection that wasn't
3 summarized by category, just in case the debtors may want to
4 talk to you as well? Okay. So I'll be back at 12:15 unless
5 you notify chambers otherwise.

6 MR. BUTLER: Thank you, Your Honor.

7 THE COURT: And obviously you can leave all of your
8 materials here.

9 (Recess from 12:00 p.m. until 12:38 p.m.)

10 THE COURT: Please be seated. Okay, we're back on the
11 record in In re Delphi Corporation.

12 MR. BUTLER: Thank you, Your Honor. A couple of
13 housekeeping matters, if we could, Your Honor.

14 With Your honor's permission, the debtors would like
15 to release Ms. Sullivan and Mr. Gershbeim as witnesses?

16 THE COURT: That's fine. I said that any witnesses
17 who were not going to be testifying now are free to leave.

18 MR. BUTLER: The other witnesses we've indicated are
19 subject to recall because if this flips to a 363 we'll need
20 them back.

21 THE COURT: Okay.

22 MR. BUTLER: Okay, thank you.

23 (Pause)

24 MR. BUTLER: Your Honor, also, in connection with the
25 MDL litigation settlement that Your Honor approved at the July

1 23rd omnibus hearing, we've been asked to read a statement into
2 the record just for the abundance of caution, avoidance of
3 doubt that things we're doing here today aren't intended to
4 affect that settlement that was approved by you separately.
5 The settlement's been delinked from the plan.

6 THE COURT: I thought the settlement was approved to
7 enable what you're doing today.

8 MR. BUTLER: That's exactly right, Your Honor.

9 But I've been asked to read the following into the
10 record, and I shall as follows:

11 "With respect to the MDL plaintiffs, as the Court is
12 aware, the debtors have recently entered into modifications to
13 the MDL settlement that among other things delink the effective
14 date of the MDL settlement from substantial consummation of a
15 plan of reorganization. This Court approved the modifications
16 in an order entered last week at the July 23rd omnibus hearing.
17 and the debtors are moving to a separate approval process in
18 the United States District Court for the Eastern District of
19 Michigan.

20 The releases of the debtors and any non-debtors
21 provided in the modified plan of reorganization are not
22 intended and shall not be construed to extend to the claim
23 asserted in the MDL actions, rather the releases of those
24 claims shall be as provided for in the MDL settlement as
25 modified as previously agreed to by Your Honor, approved by

1 Your Honor."

2 And the debtors agreed to that, Your Honor.

3 THE COURT: Okay.

4 MR. BUTLER: Your Honor, what we'd like to do before
5 what we hope would be a late lunch break is we'd like to be
6 able to take three or four of the categories of objections that
7 have one or two objectors in them and address them.

8 THE COURT: All right.

9 MR. BUTLER: We're going to deal with the business
10 judgment objections and the unions and pension-related
11 objections after the lunch break.

12 THE COURT: Okay.

13 MR. BUTLER: There are some unions that have indicated
14 they may have settled, and I'm going to try and confirm that,
15 and if there are I'll announce those before the lunch break,
16 but otherwise, we'll deal with any live objections, if it's all
17 right, Your Honor, after the lunch break.

18 I'm going to go to, sort of, category three under our
19 Exhibits 215 and 216, nature of objections. Category 3 was
20 governmental agency objections. I indicated to Your Honor that
21 the only objection is the State of Michigan Workers
22 Compensation Agency and Funds Administration. The Michigan
23 agency which has filed its objection at docket number 18264.
24 I've just spoken to counsel during the break, I've spoken to
25 counsel to the agency and have confirmed with them that they

1 want to rest on the pleadings before you.

2 With respect to the debtors, Your Honor, I'd like to
3 -- I would like to make an argument on their objection at this
4 time if that's acceptable.

5 THE COURT: Okay.

6 MR. BUTLER: Your Honor, by its objection, the agency
7 objects to the modified plan and the debtors' alternative
8 request to sell substantially all of its assets free and clear
9 of liens because the debtors estimate outstanding workers'
10 compensation obligations in Michigan account to a little more
11 than 121 million dollars with yearly payments of approximately
12 twenty-four million. And the modified plan in the MDA do not
13 create in the agency's mind a sufficient commitment on behalf
14 of the purchasers to assume the workers -- the debtors'
15 workers' compensation obligations in Michigan. They make the
16 following arguments:

17 First, they argue that the modified plan violates
18 1129(a)(3) because pre-petition workers' compensation claims
19 will not be paid in full from distributions under the modified
20 plan.

21 Second, they assert that these transactions could
22 leave injured workers without a source of benefit payment since
23 approval of the modified plan would render the estate's
24 security fund insolvent.

25 Finally, they assert that the modified plan and MDA if

1 approved could result in the debtors or purchasers lacking any
2 method to comply with their workers' compensation obligations
3 in Michigan, and that that would result in a violation of 28
4 U.S.C. Section 959(b). And, therefore, also would cause us to
5 not be non-compliant with 1129 among other statutes -- parts of
6 the Bankruptcy Code because we wouldn't be complying with
7 applicable laws.

8 In essence, Your Honor, what the Michigan agency is
9 saying to the Court, to the debtors and other stakeholders,
10 that their unfulfilled claims are superior to claims of all the
11 creditors because they assert that state regulatory
12 requirements compel the debtors to honor those obligations.

13 We believe that that's not how it works in bankruptcy.
14 The priority scheme under Section 507 of the Bankruptcy Code
15 and this Court's bar date orders govern the rights and remedies
16 of all creditors, private and governmental, including as Judge
17 Lifland ruled in the Olga Coal case at 194 B.R. 741 page 746, a
18 1996 case in this district, "That a claimant's right to
19 recovery on account of workers' compensation claims arises out
20 of pre-petition injuries. And estate's contingent claim for
21 reimbursement of workers' compensation benefits unpaid by a
22 debtor is one such claim and is subject to the requirements and
23 discharge provisions of the Bankruptcy Code notwithstanding any
24 state statutes to the contrary."

25 Now, it is a fact, Your Honor, that the Michigan

1 agency never filed any proofs of claim on a timely basis, never
2 filed a motion to file an untimely claim and you have a right
3 to file a tardy claim. And, therefore, it's not to receive a
4 distribution under the modified plan as to the discharge of any
5 pre-petition liabilities.

6 I don't believe the Michigan agency is asserting that
7 they can file an untimely claim. Although, I was advised prior
8 to the commencement of this hearing that they may have filed
9 such a claim in the last several days. But I've not been able
10 to confirm it myself.

11 Just on that point, Your Honor, the Michigan Agency
12 was served, these are indisputable facts, I believe. The
13 Michigan Agency was served with the bar date notice almost
14 three years ago but did not file a claim. It hasn't sought to
15 file a late claim. It hasn't made a requisite showing of
16 excusable neglect. Other comparable agencies around the
17 country did file proofs of claims. So it's not as though
18 workers' comp agencies around the country didn't realize that
19 it needed to do so. And I don't believe that the agency can be
20 surprised by the outcome that is occurring in this case, vis-a-
21 vis the agency. And, obviously, to the extent that the claim
22 was filed in the last couple of days, the debtors will
23 vigorously oppose that attempt on the grounds, among other
24 things, that their failure to file a proof of claim was a
25 conscious and a willful decision, and was without, at minimum,

1 excusable neglect.

2 Your Honor, we have been in conversation and dialogue
3 with regulatory authorities across the country about this case,
4 including most affected workers' compensation agencies. And
5 what we shared with them and every agency had a different set
6 of facts, some filed claims, some didn't. Some had letters of
7 credit, some didn't. Some had insurance policies, some didn't.
8 Some had issues where they were substantially resolved and
9 others had issues that had to be dealt with. But we have
10 consistently addressed a common theme. That if a regulatory
11 agency for workers' comp had not filed a proof of claim before
12 the bar date that state would not be entitled to a distribution
13 under the modified plan and we would oppose any attempt to file
14 a late claim.

15 It's also I think very clear, Your Honor, especially
16 as Your Honor considers bar date orders, and this I don't think
17 we need to deal with in any detail in this hearing, but all
18 creditors, whether they're private or governmental, have to
19 abide by bar date orders, unless they forfeit distributions
20 under a plan, and I can't think of anything more compelling at
21 this point in time, then a claim that would intend to undue the
22 fabric of the compact that's been agreed to among stakeholders
23 in this case that will permit this company to complete a
24 modified plan of reorganization.

25 I also point out, Your Honor, that Michigan has

1 previously filed several proof of claims relating to taxes and
2 other matters, and Your Honor, actually adjudicated some of the
3 State of Michigan's claims in other hearings.

4 The argument the Michigan agency makes that its claims
5 are superior to the claims of all other creditors because of
6 state regulatory requirements, and therefore, the debtors are
7 compelled to honor workers' compensation obligations, simply
8 doesn't pass muster, particularly the focus of the preemption
9 concepts in federal law. To the extent that this statute in
10 Michigan purports to establish the priority of their claims
11 over all other claims that statute is preempted by the
12 Bankruptcy Code and is of no further force and affect. And in
13 our papers we have quoted to a number of cases, including In re
14 Law Corp. at 162 Bankruptcy 234, a 1993 Bankruptcy Court
15 decision in the District of Minnesota. In re Redford Roofing
16 Company, an Illinois case in the Northern District, a 1995
17 case, it's 54 B.R. 254, 255. And we tried to make clear that
18 to all the agencies we worked with and in Michigan that,
19 frankly, this Court is not going to use, and we believe in all
20 respects, absent a consent which does not exist here in the
21 plan or otherwise, is not going to use its equitable powers or
22 other principles to alter the Bankruptcy Code's priority
23 scheme. And we have looked to U.S. v. Nolan, the Supreme Court
24 case at 517 U.S. 535, 1996 case, which I think addresses that
25 concept.

1 Your Honor, I think that the -- in terms of the
2 argument here that there's a violation of 1129(a)(3) of the
3 plan because they will not be paid in full. Because the
4 agency's unfiled pre-petition workers' comp claims aren't
5 entitled to receive distributions under the Bankruptcy Code,
6 the conclusion that we think is inevitable from that that the
7 modified plan comports with 1129(a)(3) of the code.

8 They also point to an argument which is I think a bit
9 confusing. They basically say that neither New Delphi, the
10 company buyer, or General Motors' subsidiary that's acquiring
11 four of the KEIP sites in Michigan plus the steering business,
12 that they can't -- they won't be able to qualify self-insurers
13 following confirmation of the modified plan and they won't be
14 able to comply with state law as it relates to fulfilling
15 workers' compensation obligations. And, therefore, that's a
16 further violation of 1129(a)(3).

17 I don't understand that because in Michigan there are
18 multiple paths to be able to comply with that statute. Self-
19 insurance is only one of them. You can pool your workers'
20 compensation obligations. There are other ways you can meet
21 the requirements. And I don't believe there's anything they've
22 introduced in their objection, or anything in this record, that
23 would establish that there is no ability of either a General
24 Motors or the company buyer, to comply on a post-effective day
25 basis with the laws of the State of Michigan.

1 THE COURT: And what about the reorganized debtor,
2 that the assets that remain behind?

3 MR. BUTLER: I think that's the same situation, Your
4 Honor, particularly -- and we'll get to that. The fact of the
5 matter is, that our reorganized DPH Holdings which is going to
6 hold assets that are going to be wound down is going to have
7 actually no employees. It's going to have an authorized
8 representative which I'm going to identify in this hearing, as
9 part of the hearing. And it's going to contract out on a
10 management services basis the activities it needs to undertake
11 to complete that. And so I don't believe that that particular
12 activity, and reorganized DPH Holdings, may last for any period
13 of years while it undertakes its work, but it's not going to
14 have anyone, I think, going to necessarily be subject to those
15 laws. To the extent that the company --

16 THE COURT: If it did it would be a very small number
17 of people.

18 MR. BUTLER: It would be a very small number of people
19 and the company would -- obviously, reorganized Delphi, DPH
20 Holdings, expects to comply with all laws that are applicable
21 to it.

22 The other thing that they argue is that there's a
23 violation here. I addressed it briefly before. There's a
24 violation here under 28 U.S.C. 959(b) because they say that we,
25 as debtor-in-possession, won't comply with those applicable

1 laws. But, again, I don't believe -- they've used that statute
2 and the argument to basically say that because the pre-
3 petition, what I believe will be discharged workers' comp
4 claims, aren't going to be paid that that is somehow a
5 violation of the Bankruptcy Code and of 28 U.S.C. 959(b). And
6 I don't think you can basically turn the Bankruptcy Code on its
7 head and say okay, I didn't file a claim I'm going to be
8 discharged, those workers' comp claims aren't going to be paid
9 and, therefore, that's an independent basis under 959 to argue
10 that there's a violation. Because that gets you sort of in the
11 circular -- a circulatory of argument I don't think the Court
12 should sustain.

13 State law may well establish priorities for the
14 benefit of workers' compensation claimants outside of
15 bankruptcy, but as I said before the Bankruptcy Code in our
16 view, clearly preempts conflicting state statutes as discussed.

17 And I think the only other thing I'd like to address,
18 Your Honor, is their reliance on Bickford v. Load Star Energy
19 Inc. at 310 B.R. 70 at page 76. This was an Eastern District
20 of Kentucky case decided in 2004. And that's a case that
21 apparently required payment of a pre-petition claim in full.
22 In Bickford a district court reversed a bankruptcy court order
23 enjoining state officials for enforcing a post-petition bonding
24 requirement against holders of surface mining permits in the
25 ground that bonding requirements served, not only the state's

1 pecuniary interest, but also protect the state's citizens
2 against dangers of unreclaimed land and came within the police
3 power exception of the automatic stay.

4 In contrast, here, the Michigan Agency is not
5 challenging the debtors' post-petition compliance with the
6 state workers' compensation statutes and regulations because
7 we, in fact, are in compliance and will remain in compliance
8 with the post-petition obligations imposed on us.

9 Rather, they're asking the Court to say because we are
10 not prepared to pay or to find a way through the MDA parties to
11 pay pre-petition claims that for which no proof of claim was
12 filed, that we are -- and because -- and notwithstanding the
13 preemption provisions that are applicable here, our failure to
14 do that somehow brings us back under -- apparently, under their
15 argument, the police power exception, and makes the Bickford
16 case applicable.

17 We simply believe it is not. We ask Your Honor to
18 find that the objection is without merit and to overrule it.

19 THE COURT: Okay. I understood that the agency wanted
20 to rest on its papers, but having heard the argument does it
21 have anything further to say?

22 Okay. I'm going to overrule this objection to
23 approval of the plan modification motion.

24 First, I seriously question the standing of the
25 Michigan Workers' Compensation Agency, given that it did not

1 file a claim by the bar date established in this case, and has
2 not sought over the last -- I guess it's over three years since
3 the bar date was established, to do so under Rule 9006.

4 But even assuming that the agency did have standing to
5 protect that hypothetical and currently barred claim, I believe
6 that the objection is not well taken. As I read it, the
7 objection is focused upon the debtors' obligations with respect
8 to pre-petition workers' compensation claims which under the
9 Bankruptcy Code's priority scheme are not entitled to payment
10 in full given the value of these debtors as established by the
11 exhibits, including Mr. Shore's.

12 The federal priority scheme under the Bankruptcy Code
13 cannot be modified by state action. In that regard, I agree
14 with the debtors and their citation to In Re Olga Coal Company,
15 194 B.R. 741 at 746 (Bankr. S.D.N.Y.), as well as In re Redford
16 Roofing Company, 54 B.R. 254, 255 (Bankr. M.D. Illinois 1985).

17 The argument that Michigan made by regulation override
18 the priority scheme of the Bankruptcy Code, I believe also is
19 inaccurate, at least as it applies to these claims. This is, I
20 believe, a true pecuniary claim seeking payment of pre-petition
21 obligations. And, therefore, I believe does not run afoul of
22 28 U.S.C. 959(b). If it did, then the amounts would have been
23 sought and paid years ago.

24 The objection also, although, not that clearly, raises
25 perhaps an issue as to the payment of performance of workers'